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LETTER DECISION

File OF-Fac-Oil-T260-2013-03 63
24 February 2021

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Dear Mr. Samis, Mr. Stoness, and Mr. Denstedt:

**Trans Mountain Pipeline ULC (Trans Mountain)
Trans Mountain Expansion Project (TMEP)
Certificate of Public Convenience and Necessity (Certificate) OC-065
Detailed Route Hearing MH-023-2020 – Austeville Properties Ltd. (Austeville)
Decision of the Commission of the Canada Energy Regulator (Commission)**

1 Background

On 16 December 2013, Trans Mountain filed an application with the National Energy Board (NEB) under section 52 of the *National Energy Board Act*¹ (NEB Act) for a Certificate authorizing the construction and operation of the TMEP.

The TMEP includes twinning the existing 1,147-kilometre-long Trans Mountain Pipeline (TMPL) system in Alberta and British Columbia with approximately 981 kilometres of new buried pipeline; new and modified facilities, such as pump stations and additional tanker loading facilities at the Westridge Marine Terminal in Burnaby; and reactivating 193 kilometres of the existing pipeline between Edmonton and Burnaby. Trans Mountain requested approval of a 150-metre-wide corridor for the TMEP pipeline's general route.

Upon receipt of the application, the NEB commenced a public Certificate hearing process. Following the Certificate Hearing, on 19 May 2016, the NEB issued its OH-001-2014 Report ([A77045](#)) recommending that the Governor in Council (GIC) approve the TMEP and its general pipeline corridor.

¹ R.S.C., 1985, c. N-7 (repealed).

The TMEP was approved by Order in Council (OIC) P.C. 2016-1069 in November 2016. The NEB issued Certificate OC-064 and began work on various regulatory processes, including the 2017/18 detailed route approval process.

On 30 August 2018, the Federal Court of Appeal (FCA) issued its decision in *Tsleil-Waututh Nation v. Canada (Attorney General)*² [FCA Decision], setting aside OIC P.C. 2016-1069 and remitting the matter back to the GIC for appropriate action. Following the FCA Decision, the NEB reconsidered the matter of TMEP-related marine shipping and the Government of Canada reinitiated consultations with Indigenous³ peoples.

Following a second public hearing process, the NEB issued its MH-052-2018 Reconsideration Report ([A98021](#)) in February 2019. Canada's Crown Consultation and Accommodation Report ([C00219-5](#)) was issued in June 2019. The GIC approved the TMEP again in June 2019 via OIC P.C. 2019-820 ([C00219](#)) and the NEB subsequently issued Certificate OC-065 ([C00061](#)).

On 19 July 2019, following a public comment process, the NEB set out how it would resume the TMEP detailed route approval process ([C00593](#)). The NEB directed Trans Mountain to file its Plan Profile and Book of Reference (PPBoR) for the entire TMEP route. Trans Mountain served landowners along the length of the TMEP with a notice that the detailed route approval process was underway, and placed notices in local publications. The notices indicated that landowners and Indigenous peoples with a continued or new objection to the proposed detailed route, or to the methods or timing of construction, were required to file a Statement of Opposition (SOO).

Landowners and Indigenous peoples whose 2017/18 detailed route hearings were put on hold following the FCA Decision were required to file a new SOO to continue with their detailed route hearings. Landowners and Indigenous peoples seeking a new detailed route hearing (i.e., those that did **not** have a 2017/18 detailed route hearing underway at the time of the FCA Decision) were required to file SOOs that demonstrated a material change in circumstances. Only SOOs that were filed on time, made in good faith, not withdrawn, and not frivolous or vexatious were accepted.

On 28 August 2019, the *Canadian Energy Regulator Act*⁴ (CER Act) came into force, repealing the NEB Act. As a result, the Commission is considering approval of the PPBoR under the provisions of the CER Act.

2 Process changes due to the COVID-19 pandemic

The detailed route hearing processes began prior to the COVID-19 pandemic and contemplated an oral cross-examination portion, as well as optional site visits by the Commission to the lands subject to each hearing. After the pandemic struck, the Commission issued a Procedural Direction on 21 April 2020 ([C05817](#)) for in-progress detailed route hearings, modifying its processes to exclude steps that involved in-person contact. Oral cross-examination was replaced with rounds of written questions (called information requests or IRs) and answers. Site visits were replaced with the opportunity for parties to file photographs or videos with their written evidence.

² 2018 FCA 153.

³ The use of the term "Indigenous" has the meaning assigned by the definition of "aboriginal peoples of Canada" in subsection 35 (2) of the *Constitution Act, 1982* which states:

In this Act, "aboriginal Peoples of Canada" includes the Indian, Inuit, and Métis Peoples of Canada.

⁴ S.C. 2019, c. 28, s. 10.

As explained in the Procedural Direction, the process changes were aimed at finding alternative ways to ensure that the detailed route hearings could continue in a manner that is fair and transparent, while protecting the health of those involved.

3 Detailed Route Hearing MH-023-2020

Austeville is the registered owner of lands identified as Tract PC 7538 in Segment 6.8 on PPBoR Sheet M002-PM03021-010 filed by Trans Mountain ([C00974-9](#)).

In 2017/18, Austeville did not file a SOO during the TMEP detailed route approval process. In 2019, Austeville filed a SOO ([C01711](#)) and was granted a new detailed route hearing (MH-023-2018).

As described in **Section 1**, the Commission's decision on resuming the TMEP detailed route approval process ([C00593](#)) set out that those seeking a new detailed route hearing were required to file SOOs that demonstrated a material change in circumstances related to the route location or the methods or timing of construction. This requirement helped the Commission to determine whether to grant new detailed route hearings in 2019/20 and, if so, the issue(s) regarding which each SOO Filer could make submissions.

In the Hearing Order ([C04465](#)), the Commission determined that Austeville established a material change in circumstances with respect to the route location and the timing of construction, but not with respect to the methods of construction. As a result, the most appropriate methods of constructing the pipeline were out of scope for the hearing.

In light of the foregoing, the two issues to be decided in this detailed route hearing are:

- 1) Is Trans Mountain's proposed detailed route for the TMEP pipeline the best possible detailed route? (see **Section 5**)
- 2) Is Trans Mountain's proposed timing of constructing the TMEP pipeline the most appropriate? (see **Section 6**)

Trans Mountain bears the onus to prove its case with respect to these issues on a balance of probabilities.

Since commencing this detailed route hearing, the parties filed a number of documents, which may be viewed in the online hearing folder ([MH-023-2020](#)). The Commission has considered all of the materials filed in relation to the two in-scope issues. The Commission notes that both parties made submissions about methods of construction, particularly in relation to the alternate route proposed by Austeville. During argument, Austeville stated that it was not relying on its evidence about methods of construction, but it did not seek to strike the evidence from the record.

On 2 December 2020, the Commission heard argument from Trans Mountain and Austeville by videoconference, for which a written transcript was produced ([C10106](#)), with subsequent corrections made ([C10276](#)).

3.1 Notice of detailed route approval process to Indigenous communities

On 23 August 2019, the NEB notified by letter 70 Indigenous communities,⁵ whose rights and interests could be potentially affected by the TMEP detailed route approval process in

⁵ In referring to Indigenous communities, the Commission is using this term to describe the individual First Nations, treaty associations, tribal councils, local and provincial Métis associations, and Métis settlement governing bodies that were identified as being potentially impacted by the TMEP.

Segments 6 and 7, of the detailed route approval process ([C01164](#), [C01167](#)). All notices advised that interested Indigenous communities could file a SOO in relation to the proposed detailed route, the methods of construction, and/or the timing of construction; indicated the timeline for doing so; and described how to obtain further information or assistance.

On 23 September 2019, the S'ólh Téméxw Stewardship Alliance (STSA) filed a SOO ([C01778](#)), opposing the proposed detailed route and the methods and timing of construction throughout Segments 6 and 7 lands. No other notified Indigenous community filed a SOO regarding the proposed detailed route for these segments. On 29 November 2019, the Commission issued SOO Decision No. 4 related to Segments 5, 6, and 7 ([C03323](#)), which granted a three-phased detailed route hearing process to the STSA.

On 1 May 2020, the Commission received a letter from the STSA ([C06175](#)) in which it requested leave to substitute Semá:th First Nation (Semá:th) in the place of the STSA for the purposes of representing their own interests in the SOO filed by the STSA for Segments 5, 6, and 7. With the exception of Semá:th, all signatory STSA member communities had withdrawn their signatures from the SOO.

On 29 May 2020, the Commission issued a decision that revised the three phases of the Semá:th hearing ([C06552](#)). The decision indicated that Semá:th was no longer a party in Detailed Route Hearing MH-023-2020. The Commission provided its reasons for this decision on 12 June 2020 ([C06814](#)).

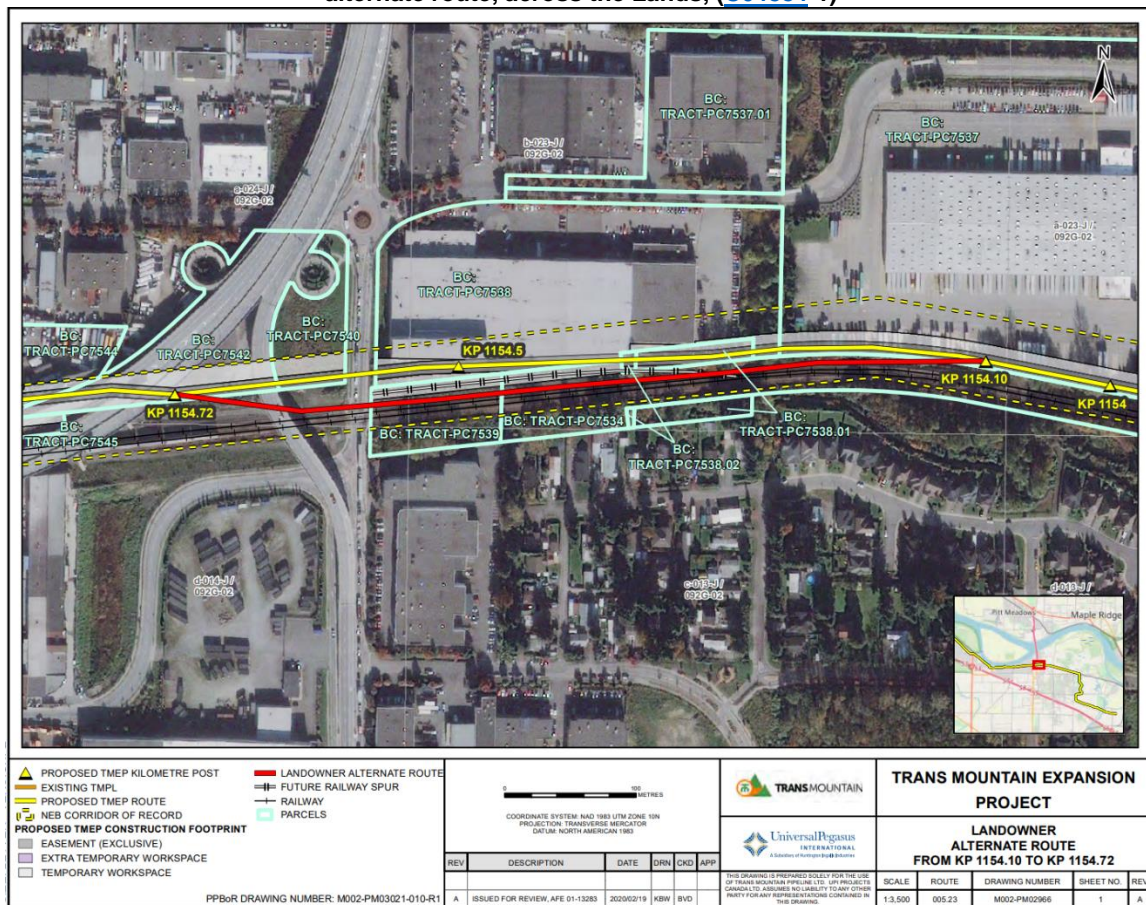
The Commission is of the view that there has been appropriate notification provided to Indigenous communities regarding the TMEP detailed route approval process and that they have been provided the opportunity to participate in the detailed route process for Segments 6 and 7.

4 Overview of the proposed TMEP pipeline on the subject lands

The geographic scope of Detailed Route Hearing MH-023-2020 is limited to Tract PC 7538, as described in **Section 3**, and is referred to in this Decision as the “Lands.”

Figure 1 below shows Trans Mountain’s proposed route, and Austeville’s proposed alternate route, across the Lands.

Figure 1 – Trans Mountain’s proposed route, and Austeville’s proposed alternate route, across the Lands, (C04884-1)



5 Is Trans Mountain’s proposed detailed route the best possible detailed route?

Trans Mountain proposes to install the TMEP along the south edge of the Lands, between Austeville’s building to the north and the railway right-of-way (RoW) to the south, for the entirety of the route across the Lands. This portion of the route will follow the railway for several kilometres.

5.1 Did Trans Mountain apply its routing criteria appropriately?

Trans Mountain’s submissions

- During the route selection process undertaken, a hierarchy of routing options was established. In descending order of preference, these were:
 - 1) where practicable, co-locate the TMEP on or adjacent to the existing TMPL easement to:
 - reduce land use fragmentation;
 - reduce the use of unencumbered lands by using the existing TMPL RoW for the location of the TMEP pipeline and construction workspace; and
 - leverage the existing pipeline protection program and landowner knowledge of the location and nature of the existing TMPL to optimize pipeline integrity and safety;
 - 2) where co-location with the TMPL is not practicable, minimize the creation of new linear corridors by installing the TMEP segments adjacent to existing

- easements or RoWs of other linear facilities, including other pipelines, power lines, highways, roads, railways, fibre-optic cables, and other utilities;
- 3) if co-location with an existing linear facility is not feasible, install the TMEP segments in a new easement selected to balance safety, engineering, construction, environmental, cultural, and socio-economic factors; and
 - 4) in the event a new easement is necessary, minimize the length of the new easement before returning to the TMPL easement or other RoWs.
- Selection of the approved TMEP corridor also included:
 - acquiring and reviewing data from assessments related to engineering, constructability, geotechnical and seismicity, land and RoW, environmental, archaeological, socio-economic (including land use), operations, maintenance, and cost, in support of the preferred corridor; and
 - engagement with landowners, stakeholders, appropriate government authorities, and Indigenous groups, to gather and incorporate additional criteria or commentary on the proposed corridor from all parties impacted or involved.
 - Route and corridor selection also followed these guidelines to enable and maintain consistent decision-making:
 - minimize the length of the TMEP pipeline;
 - avoid areas that have significant environmental or cultural value or restrictions;
 - minimize routing through areas of extensive urban development;
 - be consistent with established land use planning;
 - avoid areas of potential geotechnical or geological hazards;
 - avoid areas of extremely rough terrain or areas that have limited access;
 - minimize the number of watercourse, highway, road, railway, and utility crossings; and
 - establish the crossing of watercourses at as close as practical to right angles.
 - To determine the location of the pipeline alignment, the easement, and temporary workspace on a specific land parcel, Trans Mountain employed the same process and criteria as was used in determining the location of the proposed pipeline corridor. Where possible, the TMEP easement was fixed within the overlapping easement. Required temporary workspace was located as much as possible on open and undeveloped lands to avoid proximity to residences, treed areas, and areas of environmental or cultural sensitivity.
 - All routing decisions were based on established routing principles and criteria. No single criteria, such as route length, is determinative. Routing decisions are based on technical and environmental factors, extensive engagement efforts, constructability, operational and construction risk, and minimizing impacts on all stakeholders.
 - The proposed route is the optimal route for the pipeline based on the competing constraints of Canadian National Railway's (CN Rail) property and Austeville's property. Trans Mountain and CN Rail have not reached an agreement regarding a parallel encroachment on CN Rail lands for the TMEP route. A route through CN Rail lands may also require approvals under federal legislation, pursuant to the *Canada Transportation Act*.
 - The proposed route best fits Transport Canada's *Standards Respecting Pipeline Crossings Under Railways* (TC E-10), which states that longitudinal oil and gas pipelines on the railway RoW shall be located as far as possible from any track, and not within 7.62 metres of the centre-line of any track.

Austeville's submissions

Austeville argues that its alternate route aligns better with Trans Mountain's routing criteria. These submissions are addressed in **Section 5.2**.

5.1.1 The Commission: Trans Mountain applied its routing criteria appropriately

Following the Certificate hearings, the GIC approved the criteria recommended by the Commission's predecessor, the NEB, to determine the pipeline's route. The Commission, like the NEB, has consistently considered in an objective manner Trans Mountain's application of these criteria to assess a proposed detailed route, while also considering how the proposed route incorporates reasonable mitigation measures to address a landowner's concerns. The Commission is of the view that this practice continues to be appropriate for detailed route hearings and sees no justification to depart from it.

The Commission acknowledges that Trans Mountain's routing criteria and guidelines are reasonable and appropriate. They prioritize safety and consider a number of competing factors, including physical constraints, while attempting to minimize environmental and socio-economic impacts on lands and landowners. They are also flexible enough to incorporate reasonable mitigation measures to respond to concerns raised by landowners. Accordingly, the Commission assessed whether Trans Mountain's proposed route reflects an appropriate application of its routing criteria, while considering its proposed mitigation measures to address Austeville's concerns, and concludes that Trans Mountain applied its routing criteria appropriately.

The Commission observes that the inset on Figure 1 shows that the approved TMEP pipeline corridor in the area, within which the Lands are located, is outside of the existing TMPL RoW, such that a new RoW is required for the TMEP in this area. Accordingly, the Commission accepts that the first criterion in Trans Mountain's routing hierarchy does not apply in this case.

Trans Mountain submits that the TMEP route across the Lands is adjacent and parallel to the railway RoW to the south and that this portion of the route follows the railway for several kilometres. It submits that it considered the competing constraints of CN Rail's property and Austeville's property in locating the proposed route. On CN Rail's property, these constraints included Trans Mountain's lack of an agreement with CN Rail for an encroachment on its property, a minimum required 7.62-metre setback from the centre-line of the track, and the possibility that other federal approvals may be required if the TMEP is located on CN Rail lands. Trans Mountain did not elaborate regarding the constraints it considered on Austeville's property or specific mitigation measures planned for Austeville's property.

Austeville did not make submissions specifically regarding whether or not Trans Mountain's proposed route is consistent with its routing criteria.

The Commission agrees with Trans Mountain that the proposed route is consistent with its routing criteria, since the TMPL RoW is not near the Lands, and the proposed route follows the existing CN Rail RoW. However, the Commission also notes that Austeville identified some outstanding concerns with the proposed route and suggested an alternate route to address these concerns. Therefore, to determine whether Trans Mountain's proposed route is the best possible route, the Commission will next consider it in relation to Austeville's concerns and alternate route.

5.2 Considering the concerns and the alternate route raised by Austeville, is Trans Mountain's proposed route the best possible detailed route?

Austeville's submissions

- According to Trans Mountain's detailed engineering plans, the pipeline will pass partially underneath the corner of the building, and only 80 centimetres away from the building foundation. This may destabilize the building foundation.
- The Lands are occupied by a tenant who uses them for film and television production year-round, with a break each spring. The tenant uses every part of the Lands for production, including the areas where Trans Mountain proposes to locate the pipeline, the workspace, and the access road. Constructing the pipeline in close proximity to the building would cause significant adverse impacts on the tenant's use of the Lands, including noise and vibration, a requirement to dismantle the film set in the alley between the building and the fence, and disruption to the tenant's use of the Lands.
- After construction, the proximity to the building will make it difficult to access the pipeline for the purposes of inspections and emergency spill response. Any spills are likely to have an immediate negative impact on the building and the Lands in general.
- As Trans Mountain proposes to locate the pipeline within 3 metres of the building, any work by Austeville involving ground disturbance on or adjacent to the building after the pipeline is constructed will have to be carried out in accordance with the measures in subsection 10(3) of the *Canadian Energy Regulator Pipeline Damage Prevention Regulations – Authorizations* (in addition to other requirements in the regulations). This will be inconvenient and may increase work costs and timelines for Austeville.
- Austeville proposes an alternate route located outside of its fence and a few metres south of Trans Mountain's proposed route, through vacant CN Rail lands. Both the proposed route and the alternate route would pass through vacant lands owned by the estate of James Kavanagh, with the alternate route slightly further south on these lands.
- The alternate route is outside of the 7.62-metre setback from the railway mandated by Transport Canada. The alternate route is within the approved TMEP corridor, does not cross the railway tracks, and would not require realignment of the TMEP on adjacent lands. It crosses an abandoned rail spur.
- Austeville's alternate route would avoid placing the TMEP under the foundation of Austeville's building. It would be located approximately 8 metres away from the building at the closest point.
- The alternate route would lessen the impacts on the use of the Lands from pipeline construction. The impact of construction on the tenant's filming activities would be less because the pipeline would not run directly through film sets and would be further from the building.
- After construction, the alternate route would provide better access for inspections and emergency spill response. Any spill would be less likely to impact the building.
- The alternate route would create fewer restrictions on Austeville's ability to carry out future construction on the property because the pipeline would be located outside of the 3-metre zone stipulated in subsection 10(3) of the *Canadian Energy Regulator Pipeline Damage Prevention Regulations – Authorizations*.
- Austeville's alternate route aligns better with Trans Mountain's own routing requirements as follows:
 - Length – the alternate route is the same length as the proposed route.

- Avoid areas with significant environmental or cultural values – the alternate route minimizes the impacts on the Lands.
- Minimize routing through areas of extensive urban development – the alternate runs through vacant lands.
- Consistent with established land use plan – the alternate route is outside of the minimum setback from the railway and minimizes the restrictions under the regulations that are required for future use of the Lands.
- Avoid areas of potential geotechnical or geological hazards – there is no difference, as the two routes are only 7 or 8 metres apart.
- Avoid areas of extremely rough terrain or areas that have limited access – the alternate route has better access because it is further away from the building.
- Minimize the number of watercourses, highway, road, railway, and utility crossings – there is no difference between the two routes.
- Establish the crossing of watercourses at as close as practical to right angles – there is no difference between the two routes.
- Austeville filed a redacted Agreement of Purchase and Sale (Agreement), dated 3 September 2020, between itself and CN Rail, through which Austeville agrees to purchase the portion of the CN Rail lands upon which it proposes to locate the alternate route.
- The Agreement is subject to conditions, including that CN Rail obtain approval to subdivide the lands and register a subdivision plan in the land titles office. The sale will close 30 days after CN Rail gives notice to Austeville that it has completed the subdivision condition. The Agreement stipulates a 365-day deadline from mutual execution of the Agreement to satisfy the subdivision approval condition, and a 425-day deadline to satisfy the subdivision completion condition.
- The Agreement stipulates that CN Rail is responsible for obtaining the necessary approvals from all municipal and governmental authorities.
- Austeville did not conduct a formal environmental review of the lands subject to the Agreement. Prior to entering into the Agreement, Austeville consulted with an environmental consultant who advised that the risk of environmental contamination on the lands was low.
- The Agreement includes provisions that allow Austeville to assign the Agreement to Trans Mountain.
- Subsection 101(3) of the *Canada Transportation Act* only applies if the parties cannot come to an agreement with respect to the crossing. More importantly, the definition of “utility crossing” in the Act uses the key words “passing over or under a railway line.” There is no part of the alternate route that would pass over or under the railway line. This subsection does not apply.

Trans Mountain’s submissions

- Austeville’s building extends beyond the property lines of Tract PC 7538 in the southeast corner, and into adjacent properties.
- Austeville raises concerns that the pipeline is too close to its building, and that locating the pipeline in such close proximity to the building would have significant adverse impacts, including noise and vibration, on Austeville’s operations on the Lands as a film studio. This concern relates to construction methodology and is outside the scope of the hearing.
- With respect to Austeville’s concern that the pipeline’s proximity may destabilize the building foundations based on the conditions of the soil around the foundations, Trans Mountain scheduled additional bore holes to be drilled in 2020 to assess the

soil conditions in the area where an auger bore is planned in close proximity to the Austeville building. This process will also provide soil parameters of the material adjacent to the building's foundation. Based on these soil parameters, Trans Mountain will adjust the profile of pipe along the building's foundation to minimize any impacts, and monitoring points will be set up on the building to monitor settlement and vibration.

- Emergency management and spill contingency planning are addressed in separate regulatory proceedings and are outside the scope of the hearing.
- In Trans Mountain's view, the best possible detailed route for the TMEP needs to balance a number of factors:
 - a) The route needs to be technically viable and constructible.
 - b) The route needs to avoid or mitigate environmental impacts to the extent practicable.
 - c) The route needs to balance the interests of all affected landowners.
 - d) The route needs to be obtainable within a reasonable time and within the project schedule.

The proposed route satisfies each of these factors. By comparison, the alternate route prioritizes Austeville's interests over the interests of adjacent landowners and over the interest of the TMEP. Further, it appears the alternate route will not be available within a reasonable timeframe, if ever.

- The alternate route does not require realignment of the pipeline on adjacent properties.
- During argument, Austeville changed its evidence with respect to the methods of construction and, consequently, the workspace required for the alternate route. The parties cannot ignore the workspace required for the alternate route. The only fact in Austeville's sworn evidence is that trenchless construction is required on CN Rail lands. The Ramsay Report at PDF page 12 of 36 states ([C06897-3](#)):

Further, CN is willing to sell the strip of land south of Austeville to Austeville to accommodate the pipeline. So, there is, subject to the safe installation of the pipeline using trenchless construction at depth, no opposition to its installation through the subject CN lands.

Nowhere did Austeville abandon this provision. As a result, the Commission's determination must be based on the fact that trenchless construction is required on CN Rail lands. Otherwise, Trans Mountain would be prejudiced in that Austeville has tried to change its position and abandon this evidence that trenchless construction is required, which would have a knock-on effect on Trans Mountain's mapping and assessment of the alternate route, based on facts that are not in sworn evidence on this record.

- Based on Austeville's numerous filings, Trans Mountain understood that trenchless construction was required, and the evidence on the record establishes that. Further, Trans Mountain's mapping in response to Commission IRs, as well as supplemental evidence, were premised on that. If this evidence changes on the day of argument, it is fundamentally prejudicial to Trans Mountain since it does not understand what the alternate route is based upon, since the construction methods proposed in Austeville's evidence appear to have changed.
- Austeville's alternate route is not the best possible route through the Lands on the basis that it is generally contrary to Trans Mountain's routing criteria and increases costs and impacts on adjacent lands.
- The proposed route aligns better with Trans Mountain's routing criteria. Austeville proposes a fully trenchless installation of the alternate route on CN Rail lands, which would increase the impacts on other landowners through workspace requirements,

increased noise, access disruption for retail properties, and increased construction duration. More than two acres of additional workspace on adjacent lands would be required, which could not be confined to the CN Rail lands. Any reduction in the impact on Austeville is offset by significantly larger impacts on other landowners and the public.

- The only potential option for the alternate route is a Direct Pipe Installation launching from the Costco Wholesale Canada Ltd. property to the east of the Lands (Tract PC 7537), which would severely impair or temporarily suspend Costco's operations of its regional distribution centre.
- The combination of increased workspace requirements and closer proximity to the railway would increase the impact of construction on CN Rail's operations and neighbouring properties. Overall, the alternate route would have a significantly larger impact on landowners and the public than the TMEP route. In contrast, the proposed route will largely follow the railway, consistent with Trans Mountain's routing criteria.
- Trans Mountain would have to complete environmental studies on the CN Rail lands to assess whether the alternate route is the best possible detailed route.
- In order to avoid 200 metres of route on the Lands, 1,000 metres of route for the TMEP, all on adjacent lands, would be delayed by a year or more. Each month of delay to construction would add approximately \$3 million to construction costs. For the alternate route, additional costs would also include further engagement with adjacent and nearby landowners, landowner compensation, and regulatory processes. Landowners affected by Austeville's alternate route could object to it, resulting in further costs and delays. As a result, the costs of the delay associated with the alternate route would range between \$9 million to potentially over \$36 million, depending on the length of the delay.
- Trans Mountain's proposed route best meets the requirements of Transport Canada's *Standards Respecting Pipeline Crossings Under Railways* (TC E-10) and Canada Standards Association (CSA) Z662, which both require longitudinal oil and gas pipelines on the railway RoW to be located as far from rail tracks as possible and beyond a 7.62-metre setback. Austeville's alternate route is closer to the railway tracks than is the proposed route.
- The timing of the availability of the CN Rail lands is material to the determination of the best possible route for the TMEP. Trans Mountain and CN Rail have not reached an agreement regarding a parallel encroachment (i.e., a RoW on CN Rail lands that would run parallel to the railway tracks) to accommodate the TMEP.
- CN Rail has declined to voluntarily provide Trans Mountain with a statutory RoW or an easement for the TMEP on the CN Rail lands required for the alternate route, within the timelines required for TMEP construction. Therefore, to implement the alternate route, Trans Mountain would have to wait to obtain a RoW on the CN Rail lands until Austeville and CN Rail have obtained all municipal and governmental approvals, and have completed the subdivision, consolidation, and registration of the CN Rail lands, as contemplated under the Agreement.
- It is premature for Trans Mountain to make a determination as to whether the proposed sale of the CN Rail lands to Austeville, if completed, would change Trans Mountain's consideration of the alternate route as the best possible detailed route. Trans Mountain has no certainty as to whether the transaction contemplated in the Agreement, and the associated CN Rail lands that are necessary for the alternate route, will close within a reasonable period of time, or at all. TMEP construction is scheduled to start in Q1 2021 and it appears unlikely that the closing of the transaction contemplated by the Agreement will occur prior to then.
- Obtaining a RoW on the CN Rail lands would require further steps by Austeville and/or CN Rail under the Agreement, including obtaining municipal and

governmental approvals and subdivision of the CN Rail lands. In Trans Mountain's view, the relevant standards for physical placement of the TMEP along the alternate route include all necessary approvals from all municipal and governmental authorities referenced in the Agreement, and to be identified by Austeville.

- The timing of construction along the alternate route would be dependent on the timelines set out in the Agreement. There are numerous contractual conditions which must be satisfied, waived, or removed in order for the CN Rail lands to become available for construction along the alternate route. It is highly uncertain whether the transaction contemplated by the Agreement will close or when the CN Rail lands will be available, if at all, for construction. If the timing for the satisfaction of the Agreement conditions cannot be provided with certainty and the CN Rail lands cannot be made available for construction on the alternate route within the timelines of Trans Mountain's construction schedule, then for practical purposes, this is akin to the CN Rail lands not being available at all.
- Trans Mountain's ability or inability to apply for a right of entry order from the Commission relating to adjacent lands does not alter Trans Mountain's position that the proposed route is the best possible route.
- If Trans Mountain were to proceed with expropriation or right of entry on the CN Rail lands, additional approvals under other federal legislation may be required, including pursuant to the *Canada Transportation Act*. Therefore, expropriation on the CN Rail lands would be more complicated and would not avoid the delays that Trans Mountain is trying to deal with in order to construct the TMEP within a reasonable period of time. As a result, the CN Rail lands are not reasonably available for Austeville's alternate route. In comparison, the Canada Energy Regulator (CER) legislation and process allows for right of entry, outside of the detailed route hearing process, should Trans Mountain be unable to reach a voluntary agreement with Austeville for the proposed route.
- Approvals may be required under the *Canada Transportation Act* because it appears that the Commission may not have the specific authority to make an order regarding a crossing or construction of a pipeline across, on, along, or under a railway. This authority is found in subsection 334(4) and section 217 of the CER Act.
- Under subsection 101(3) of the *Canada Transportation Act*, if an agreement relating to the construction of a utility crossing cannot be negotiated, the interested party may apply for approval from the Canadian Transportation Agency, which can then authorize the construction of that utility crossing. A utility includes a line for the transmission of hydrocarbons. In Trans Mountain's view, this provision would apply to a right of entry application on railway lands that are owned by CN Rail.

5.2.1 The Commission: Considering the concerns and the alternate route raised by Austeville, Trans Mountain has not established that its proposed route is the best possible detailed route

The Commission is not persuaded, having considered the evidence of the parties, that Trans Mountain has met the burden to establish that its proposed route is the best possible detailed route. While Austeville's concerns about the proposed route were not enough to convince the Commission that it should be denied, Austeville went to extraordinary lengths to demonstrate the feasibility of its preferred alternate route. Having considered the alternate route, Trans Mountain failed to persuade the Commission that the proposed route is the best possible detailed route.

Austeville's concerns with Trans Mountain's proposed route

Austeville raised several concerns with the proposed route. First, Austeville argued that the proposed route runs underneath a corner of the building and within 80 centimetres of the building foundation, which may destabilize the foundation. In response, Trans Mountain observed that the corner of Austeville's building extends beyond the property lines of the Lands and onto adjacent lands. Further, Trans Mountain stated that it would drill additional bore holes to assess soil conditions prior to construction and, based on these assessments, adjust the pipeline profile along the building's foundation to minimize impacts. Trans Mountain also stated that it would monitor the building for settlement and vibration.

While the Commission acknowledges Trans Mountain's submission that a corner of Austeville's building appears to be located on adjacent lands, the Commission understands Austeville's concern to be generally about the close proximity of the proposed pipeline to the building. There is insufficient evidence on the record for the Commission to reach a conclusion about any potential destabilization effects of the proposed route on the building foundation. Further, there is insufficient evidence on the record for the Commission to reach a conclusion about Trans Mountain's ability to adequately address any potential destabilization issues through its proposed mitigation measures. In any event, the Commission notes the close proximity of the proposed pipeline to the building foundation, which raises the question of whether potential destabilization issues could be reduced or avoided by moving the pipeline further from the building, thereby reducing or eliminating the need for mitigation measures.

Second, Austeville argued that pipeline construction in close proximity to the building would disrupt the tenant's use of the Lands for filming. While the Commission appreciates Austeville's concerns regarding impacts to the tenant's filming activities, the Commission observes that construction impacts are generally temporary and reversible or compensable in nature. The Commission expects that Trans Mountain would continue to engage with Austeville with respect to mitigating or compensating for impacts on the tenant's film studio operations. Austeville also argued that construction impacts on Austeville and its tenant could be reduced by following the alternate route, which is discussed later in this Letter Decision. While the Commission recognizes this possibility, it would require information about the methods of construction, which are not within the scope of the hearing, to make a determination.

Third, Austeville argued that the proximity of the proposed route to the building would make it difficult to access the pipeline for the purposes of inspections and emergency spill response, and that spills would be more likely to immediately and negatively impact the building and the Lands. The Commission observes that Austeville did not explain how access to the pipeline would be impeded by the building's proximity. The Commission acknowledges that Austeville's building and Lands could potentially be impacted more by a spill if the pipeline were located adjacent to the building than if it were located farther away. However, the Commission notes that Austeville did not explain any specific concerns related to a spill or how a spill may impact Austeville or its tenant. Further, the Commission notes that emergency management and spill contingency planning are subject to regulatory processes outside of the detailed route hearing process.

Lastly, Austeville argued that any future construction involving ground disturbance on or adjacent to the building would have to comply with subsection 10(3) of the *Canadian Energy Regulator Pipeline Damage Prevention Regulations – Authorizations*, which would be inconvenient and may increase costs and timelines. The Commission notes that Austeville did not provide any specific details of future construction plans or how it may be affected by the location of the proposed route. The Commission further notes that any ground disturbance activities within 30 metres of a pipeline are subject to the *Canadian Energy*

Regulator Pipeline Damage Prevention Regulations – Authorizations. However, the Commission acknowledges that subsection 10(3) may apply to Austeville's future construction on its Lands if the pipeline follows Trans Mountain's proposed route, but may not apply if the pipeline follows a different route.

The Commission is of the view that Austeville's concerns with the proposed route are not enough, on their own, to support the conclusion that it should be denied. However, in considering Austeville's alternate route, the Commission is persuaded that a better route may be possible and, accordingly, Trans Mountain has not established, on a balance of probabilities, that its proposed route is the best possible detailed route.

Austeville's alternate route

Austeville proposed an alternate route, which is shown on Figure 1. The Commission observes that the alternate route is very similar to Trans Mountain's proposed route, but located a few metres further south, on vacant lands owned by CN Rail, between the railway line and an industrial area.

The Commission wishes to restate that, under no circumstance does a SOO Filer have an onus to establish that its alternate route is the best possible route. The onus is on Trans Mountain to establish, on a balance of probabilities, that its proposed route is the best possible route. In this case, Trans Mountain did not meet this burden.

Trans Mountain's objections to Austeville's alternate route

Trans Mountain raised three main objections to the alternate route, which are addressed in sequence below:

- 1) The alternate route requires trenchless construction, which results in additional impacts;
- 2) The alternate route is generally contrary to Trans Mountain's routing criteria; and
- 3) The route requires lands that may be unavailable.

1) Does the alternate route require trenchless construction?

During oral argument, each party presented its view as to whether the alternate route requires trenchless construction. For the reasons discussed below, the Commission agrees with Austeville that the alternate route's location is independent of its method of construction and does not necessarily require trenchless construction.

In the Hearing Order, the Commission informed the parties that methods of construction were out of scope for this detailed route hearing. The Commission later confirmed this in its decision on Austeville's review and variance application. However, during the time that the Commission was considering the review and variance application, Austeville was required to file its written evidence. Austeville included submissions about the most appropriate methods of construction in its written evidence, but premised them with the following statement:

To date, Austeville has not received the Commission's decision on the motion. Austeville provides these submissions on methods of construction in the event that the methods of construction are determined to be within the scope of the hearing.

Austeville also included the Ramsay Report in its evidence, which focused primarily on methods of construction, but also discussed the proposed and alternate routes of the pipeline. During argument, Austeville stated that it was not relying on its written submissions

about the most appropriate methods of construction, on the basis that those submissions were determined to be outside the scope of the hearing.

In its reply evidence, Trans Mountain identified specific paragraphs of Austeville's evidence, as well as specific pages of the Ramsay Report, that it considered to be out of scope on the basis that they were about methods of construction. Despite this, Trans Mountain advanced arguments against the alternate route based on the assumption that it would be installed using trenchless construction methods.

During argument, Trans Mountain stated that it would be prejudiced if the Commission did not consider the methods of construction of the alternate route. Specifically, Trans Mountain referred the Commission to part of paragraph 17 of the Ramsay Report in Austeville's evidence, which states:

Further, CN is willing to sell the strip of land south of Austeville to Austeville to accommodate the pipeline. So, there is, subject to the safe installation of the pipeline using trenchless construction at depth, no opposition to its installation through the subject CN lands (personal communication, Daniel Suh, CN Public Works Officer, Vancouver, B.C., April 9, 2020).

Trans Mountain asserted that, because Austeville did not abandon this provision prior to argument, Trans Mountain understood, based on this provision and "Austeville's numerous filings," that trenchless construction was required for the alternate route. Trans Mountain argued that, if the Commission does not make its determination based on the fact that trenchless construction is required for the alternate route, then Trans Mountain will be prejudiced because it "[did] not understand what the alternate route is based on, since the construction method that was proposed in Austeville's evidence appears to have changed."

Trans Mountain further argued that the Commission must consider the workspace requirements associated with trenchless construction of the alternate route to fairly assess it against the proposed route, as depicted in Trans Mountain's mapping.

While the Commission determined that methods of construction are not within the scope of the hearing, it recognizes that methods of construction could be a relevant consideration to the extent that they were inseparable from submissions about routing. This could be the case where a party proposed a route only on the basis that it be constructed using certain methods. However, the Commission disagrees with Trans Mountain's position that Austeville's submissions demonstrate that it proposed the alternate route only on the basis that it be constructed using trenchless methods. The Commission does not share Trans Mountain's understanding that the alternate route requires trenchless construction.

The Commission observes that Austeville's written evidence is divided into different sections, including "Route of the pipeline" and "Methods of construction." The former section discusses Austeville's concerns related to the location of the proposed pipeline and describes the location of the alternate route, but does not discuss methods of construction. As noted above, the first paragraph of the latter section states that Austeville provided submissions on methods of construction in the event the Commission granted its review and variance application to add methods of construction as an in-scope issue. The Ramsay Report, which formed part of Austeville's evidence, does not clearly separate submissions about routing from submissions about methods of construction.

In the Commission's view, the meaning of the excerpt of the Ramsay Report cited by Trans Mountain and quoted above is unclear. On one hand, it could mean that, if the land sale proceeds and Austeville becomes the new owner of the lands required for the alternate route, Austeville would not oppose the installation of the pipeline on that land, provided that

trenchless construction was used. On the other hand, it could be expressing an opinion that CN Rail's willingness to sell to Austeville the lands required for the alternate route indicates that CN Rail would not object to the pipeline being installed on its land, provided that trenchless construction methods were used.

In the Commission's view, neither interpretation is a clear statement that the alternate route must be installed using trenchless construction methods. The former expresses Austeville's position based on a potential future ownership scenario, while the latter is speculation about CN Rail's position.

The Commission notes that CN Rail's position is based on a scenario whereby it is the owner of the required lands. It is not clear from the evidence what influence, if any, CN Rail would have over the methods of construction should the lands be sold to Austeville.

The Commission is of the view that Trans Mountain was not precluded from providing submissions on the location of the alternate route separate from methods of construction. Trans Mountain was, therefore, not prejudiced in its ability to make full representations about the best possible route of the pipeline. In fact, the Commission sought additional information from Trans Mountain, via an IR, about potential physical barriers to placing the alternate route on the CN Rail lands, in the event the sale to Austeville was completed. In response, Trans Mountain stated that the question was "hypothetical," since it presumed that the Agreement would close, and that "the relevant standards for physical placement of the TMEP along the [alternate route] include all necessary approvals from all municipal and governmental authorities referenced in the Agreement." In the Commission's view, Trans Mountain provided no additional information that was helpful about possible physical barriers to the location of the alternate route.

Taking into account the scoping direction provided by the Commission, the Commission's understanding of Austeville's submissions, and the opportunities available to Trans Mountain to make submissions about the alternate route's location separate from its method of construction, the Commission is not persuaded that Trans Mountain would be prejudiced by the Commission's consideration of the alternate route's location separately from any particular method of construction.

2) Is the alternate route generally contrary to Trans Mountain's routing criteria?

For the reasons discussed below, the Commission finds that the alternate route is consistent with Trans Mountain's routing criteria.

Austeville submitted that the proposed and alternate routes are very similar to each other, given that they are the same length, they both follow the rail line, and they are located only a few metres apart from each other. However, it is Austeville's position that the alternate route would have fewer impacts on Austeville and its tenant, such that the alternate route better reflects Trans Mountain's routing criteria, including its route and corridor selection guidelines, than does the proposed route.

In response, Trans Mountain argued that the alternate route is generally contrary to Trans Mountain's routing criteria because:

- the alternate route increases impacts on adjacent lands;
- the alternate route increases project costs;
- the alternate route requires Trans Mountain to complete environmental studies on the CN Rail lands to assess whether it is the best possible detailed route; and
- the proposed route complies better with railway setback requirements than does the alternate route.

Impacts of the alternate route on adjacent lands

The Commission recognizes that an alternate route can shift impacts from one landowner to adjacent landowners, but finds that there is insufficient evidence on the record to reach this conclusion in this particular case.

Trans Mountain argued that the closer proximity of the alternate route to the CN Rail tracks would increase construction impacts on CN Rail's operations, and a fully trenchless installation method would increase impacts on other landowners through workspace requirements, increased noise, access disruption for retail properties, and increased construction duration.

Regarding Trans Mountain's concern that construction impacts on CN Rail would be increased by the alternate route's location, the Commission reiterates that construction impacts are generally temporary and reversible, or compensable in nature.

The Commission agrees with Trans Mountain that fully trenchless construction of the alternate route would likely result in additional workspace requirements on adjacent lands, which would transfer construction impacts from Austeville to the owners of those lands. However, the Commission has found nothing on the evidentiary record that would preclude the possibility that the alternate route could potentially be installed using other methods of construction, such that it is not persuaded by this argument. Trans Mountain has not filed information to suggest that the alternate route's location, apart from any particular method of construction, would shift impacts to additional landowners.

The Commission gives significant weight to the fact that the CN Rail lands are vacant and the alternate route is located between the railway line and an industrial area. On this basis, the Commission finds that the alternate route would not necessarily increase post-construction impacts on CN Rail or other landowners. Both the alternate route and the proposed route also run through vacant adjacent lands owned by the estate of James Kavanagh, who is not a party to the hearing. In the absence of any evidence to the contrary, the Commission is of the view that the alternate route is unlikely to cause more impacts to these estate lands than would the proposed route.

Costs considerations for the alternate route

Trans Mountain argued that the alternate route would result in additional costs due to delays on adjacent lands and further engagement with adjacent and nearby landowners, landowner compensation, and regulatory processes. According to Trans Mountain, landowner opposition to the alternate route could also result in further costs and delays.

The Commission acknowledges that any delays past Trans Mountain's planned construction timeframe may result in additional costs. However, the Commission understands that the additional costs due to delays on adjacent lands referred to by Trans Mountain would largely result from waiting for ownership of the CN Rail lands to transfer to Austeville and the use of other adjacent lands for temporary workspace to accommodate trenchless construction of the alternate route. As discussed later in this Letter Decision, a process may be available to Trans Mountain to acquire the necessary land rights and, as previously determined, trenchless construction is not required for the alternate route, such that these additional costs could be avoided.

The remaining costs and delays to which Trans Mountain refers relate to landowner engagement, opposition, and compensation with respect to the alternate route, and the potential for additional regulatory processes. The Commission is of the view that these

potential additional costs and delays are a consequence that arises any time the Commission rejects a proposed route, and are not a sufficient reason to dismiss the alternate route in this case.

Environmental considerations for the alternate route

Trans Mountain stated that it would have to complete environmental studies on the CN Rail lands to assess its suitability for the TMEP. While Trans Mountain may have to undertake such studies, there is no evidence on the record to suggest that, from an environmental perspective, the alternate route is unsuitable for the TMEP.

Railway setback requirements

Trans Mountain submitted that the proposed route complies better with railway setback requirements than the alternate route, because it is located farther from the railway tracks. Trans Mountain referred to Transport Canada's *Standards Respecting Pipeline Crossings Under Railways* (TC E-10), which amends CSA Standard Z662-99 to add a clause stating that "[l]ongitudinal oil and gas pipelines on the railway RoW shall be located as far as possible from any track. They shall not be within 7.62 [metres] of the centre-line of any track..."

With respect to the first requirement, that the pipeline be located as far as possible from any track, the Commission understands that this requirement applies to pipelines located within the railway RoW. There is no evidence on the record of the boundaries of the CN Rail railway RoW, or whether the proposed route and alternate route are within or outside of this RoW, such that it is unclear whether the requirement applies in this situation. Regarding the second requirement, the Commission finds that both the alternate route and the proposed route are outside the 7.62-metre setback. Accordingly, the Commission finds no difference between the proposed and alternate routes with respect to compliance with railway setback requirements.

3) Are the lands required for the alternate route unavailable?

For the reasons discussed below, the Commission is not persuaded that the CN Rail lands required for the alternate route are unavailable.

Trans Mountain argued that the lands required for the alternate route are not available because it has not reached an agreement with CN Rail for a RoW that would run parallel to the railway; the Agreement that would transfer the CN Rail lands to Austeville may not complete within Trans Mountain's construction timeline or at all; and the Commission may not have the jurisdiction to issue an order granting Trans Mountain access to the lands.

While the issue of a company's legal access to lands is determined outside of the detailed route hearing process, the Commission accepts that, in certain situations, it may be a reasonable consideration in determining the viability of the route through a particular tract of land. The Commission accepts Trans Mountain's submission that it has not reached an agreement with CN Rail to locate the TMEP on its lands. The Commission also accepts that another way for Trans Mountain to secure legal access to the lands required for the alternate route could be through an agreement with Austeville, if and when ownership transfers to it from CN Rail.

Austeville filed a redacted copy of the Agreement through which it agrees to purchase the lands required for the alternate route from CN Rail, and submitted that, as the new landowner, it would agree to locate the TMEP on those lands. In response, Trans Mountain

argued that the lands would still not be available for the TMEP because the Agreement may not complete in time to meet Trans Mountain's construction timeline or at all. Trans Mountain specified that the Agreement is subject to numerous conditions that may not be satisfied, particularly since some of them are in the control of CN Rail or third parties. According to Trans Mountain, uncertainty with respect to the timing of completing the agreement is, for practical purposes, akin to the CN Rail lands not being available at all.

The Commission agrees with Trans Mountain that it is possible that the agreement will not complete within Trans Mountain's construction timeline or at all. With respect to the timing of satisfying the Agreement conditions, the Commission acknowledges Austeville's evidence that the Agreement stipulates a maximum timeline for completion of 425 days, which began on the day that the parties mutually executed the Agreement. The Commission acknowledges that this timing may be past Trans Mountain's planned Q1 2021 construction start date. These concerns with respect to the Agreement do not, however, persuade the Commission that the necessary lands are unavailable for the alternate route.

Specifically, the Commission is not persuaded by Trans Mountain's argument that the Agreement is the only remaining option for Trans Mountain to gain the required access to the lands. The Commission notes that section 324 of the CER Act empowers the Commission to issue an order, commonly called a right of entry order, granting a company the legal right to acquire or lease privately-owned lands required for a pipeline. In its submissions, Trans Mountain acknowledged that this right of entry process would apply to Austeville's lands, in the event that the parties were not able to reach a voluntary agreement for the proposed route.

However, with respect to the CN Rail lands for the alternate route, Trans Mountain took the position that additional approvals may be required under the *Canada Transportation Act* because the Commission may not have the specific authority to issue a right of entry order for construction of a pipeline across, on, along, or under a railway. More specifically, Trans Mountain argued that the *Canada Transportation Act* may apply to a right of entry application on railway lands owned by CN Rail. To support this argument, Trans Mountain referred the Commission to various provisions of the *Canada Transportation Act* and the CER Act.

Neither Trans Mountain nor Austeville submitted detailed evidence of the applicable process to gain legal access to lands adjacent to a railway without the consent of the owner. In argument, Trans Mountain acknowledged that it was not aware of which process would apply or what it would entail, including the potential timeline. Based on the evidence on the record, the Commission is not persuaded that the process to gain access to the CN Rail lands is prohibitive. Accordingly, the Commission is not persuaded by Trans Mountain's argument that the necessary lands are not available for the alternate route.

5.3 The Commission: Trans Mountain has not established that its proposed route is the best possible detailed route

In the Commission's view, the evidence on the record leads to the conclusion that the possibility of a preferable route exists and, therefore, that Trans Mountain has not established, on a balance of probabilities, that its proposed route is the best possible detailed route.

Although Austeville's concerns with the proposed route were not persuasive enough on their own for the Commission to find that it is not the best possible route, Austeville suggested an alternate route that also reflects Trans Mountain's routing criteria. In considering this alternate route, the Commission was unable to conclude that the proposed route is the best possible route. In particular, the Commission notes that the alternate route is located on vacant lands, which Austeville went to extraordinary lengths to demonstrate could be

available for this purpose, to avoid placing the pipeline directly adjacent to Austeville's building.

Trans Mountain did not provide sufficient information to rebut the alternate route and demonstrate that the proposed route is the best possible detailed route. In particular, the Commission was not persuaded by Trans Mountain's submissions based on its understanding that trenchless construction is required for the alternate route, or by its submissions regarding the availability of the CN Rail lands. As a result, the Commission is unable to find that Trans Mountain's proposed route is the best possible detailed route.

To be clear, the Commission's decision is not premised on the view that the proposed route is necessarily flawed; rather, the Commission's decision is based on its finding that there is insufficient information on the record to conclude that the proposed route is the best possible detailed route, when considering the alternate route.

6 Is Trans Mountain's proposed timing of construction the most appropriate?

Trans Mountain anticipates that construction will occur from Q1 to Q2 of 2021, beginning in late spring and ending in early summer.

Trans Mountain's submissions

- Construction is expected to last six months, with the majority planned within a six-week window in the spring. Trans Mountain commits to engage with Austeville prior to and throughout construction to minimize impacts on the Lands and Austeville's business, including attempting to schedule construction during breaks in the tenant's film production.
- Oregon spotted frog habitat has been identified at crossing BC-768a. The Oregon Spotted Frog Mitigation and Habitat Restoration Plan recommends that isolated watercourse crossings of Oregon spotted frog habitat should occur in the "active" season (mid-August to October), if possible, to avoid sensitive periods for this species and align with least-risk fish windows, where applicable. This window is at odds with Austeville's request to schedule construction in April through June. The plan also recognizes that, where potential Oregon spotted frog habitat cannot be avoided, Trans Mountain will conduct a salvage and release. BC-768a is included in the Oregon spotted frog salvage permit should amphibians need to be salvaged and released.

Austeville's submissions

- The Lands are occupied by a tenant who uses them for the purposes of film and television production, which is a use that is particularly sensitive to noise and vibration from construction. Seven months needed for construction in Q1 and Q2 2021 would cause substantial disruption to the tenant's film studio operations. Minimizing the duration of construction would minimize disruptions.
- Timing should overlap with the seasonal break in filming by the tenant, which is typically in the spring for four to six weeks.
- An April-through-June construction schedule would be most suitable to avoid construction occurring during Oregon spotted frog breeding season.

6.1 The Commission: The issue of the most appropriate timing of construction will be determined at a future time

The Commission is cognizant that Trans Mountain may have determined its proposed construction timing based on its proposed route through Austeville's Lands. As a result of the Commission's decision that the proposed route is not the best possible detailed route, Trans Mountain may propose different construction timing. Accordingly, the Commission did not make a determination with respect to the most appropriate timing of construction as part of this Letter Decision.

7 Conclusion

The Commission appreciates the time and effort of Austeville and Trans Mountain, as well as their representatives, in providing their presentations of evidence and argument in this detailed route hearing.

Having decided that, on a balance of probabilities, Trans Mountain's proposed detailed route is not the best possible detailed route, the Commission will not approve the PPBoR for the Lands.

Yours sincerely,

Signed by

Jean-Denis Charlebois
Secretary of the Commission

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